



But What Did HHS Do Last Summer?

Weakened Privacy Rule Puts Your Health Information at Risk

September 11, 2002

Dear Colleague:

On August 14, the Department of Health and Human Services weakened vital protections in the medical Privacy Rule, creating dangerous loopholes that expand unauthorized access to the personal health information of millions of Americans. The attached editorial in The Boston Globe ("Patient Privacy," August 18, 2002) provides useful background information on this important issue. The modifications approved by HHS roll back strong privacy safeguards established during the Clinton Administration. Specifically, the HHS modifications:

- **Remove patients' right to consent to the release of their private medical information:** HHS has taken away your right to decide whether your medical information can be shared for health care treatment, payment, and so-called "health care operations," a category including commercial activities such as the sale or merger of an HMO. A patient's right to consent was at the core of the Clinton Administration's privacy rule. The Bush Administration hollowed out this core by removing the consent requirement for a wide range of activities, including a one-time initial consent for re-use of information for business purposes that have nothing to do with treatment of the patient.
- **Allow drug companies broad access to patient information without prior consent:** The Clinton Administration's rule contained a provision that allowed patient information to be disclosed to drug companies without consent for a limited list of public health related activities, such as for the purpose of reporting serious side effects from a prescription drug to the FDA. The Bush Administration replaced this narrow list with a broader exemption that allows nonconsensual disclosure of patient information to drug companies for a wide range of activities, which may include marketing campaigns. This change is especially troubling since once drug companies obtain a patient's medical information, they are not subject to any federal restrictions on using that information for other purposes.
- **Permit marketing schemes that turn your pharmacist into a secret agent for drug companies:** This loophole in the HHS rule allows drug companies to pay your pharmacist or doctor to make new treatment recommendations based on your medical history and send you unsolicited product mailers, without informing you of the fee the drug company has paid to your health care provider.

We are greatly disturbed by the loopholes created by the Department's recent modifications to the Privacy Rule. If you would like to join our efforts to close these harmful loopholes, please contact Mark Bayer with Rep. Markey (5-2836), Kristin Amerling with Rep. Waxman (5-5051), or Karen Folk with Rep. Dingell (6-3400).

Sincerely,

Edward J. Markey
Member of Congress

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